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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEAN W.C. WILEY,  
Inmate Booking No. 12539831,

Plaintiff,

vs.

SAN DIEGO COUNTY; SAN DIEGO  
SHERIFF; GEORGE BAILEY DETENTION  
FACILITY,

Defendants.

Civil 12-2504 WQH (BGS)  
No.

**ORDER DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING CASE WITHOUT  
PREJUDICE PURSUANT TO  
28 U.S.C. § 1915(a)**

**[ECF No. 2]**

Plaintiff, currently housed at George Bailey Detention Facility located in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a). [ECF No. 2].

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). See

1 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,  
2 1177 (9th Cir. 1999). “Under the PLRA [Prison Litigation Reform Act], all prisoners who file  
3 IFP civil actions must pay the full amount of the filing fee,” regardless of whether the action is  
4 ultimately dismissed for any reason. *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)  
5 (citing 28 U.S.C. § 1915(b)(1) & (2)).

6 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also  
7 submit a “certified copy of the trust fund account statement (or institutional equivalent) for the  
8 prisoner for the 6-month period immediately preceding the filing of the complaint....” 28 U.S.C.  
9 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment  
10 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the  
11 average monthly balance in the account for the past six months, whichever is greater, unless the  
12 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,  
13 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%  
14 of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and  
15 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
16 § 1915(b)(2).

17 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), he has  
18 not attached a certified copy of his prison trust account statement for the 6-month period  
19 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.  
20 CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a civil action  
21 ...without prepayment of fees ... shall submit a certified copy of the trust fund account statement  
22 (or institutional equivalent) ... for the 6-month period immediately preceding the filing of the  
23 complaint.” 28 U.S.C. § 1915(a)(2).

24 Without Plaintiff’s trust account statement, the Court is unable to assess the appropriate  
25 amount of the filing fee which is statutorily required to initiate the prosecution of this action.  
26 *See* 28 U.S.C. § 1915(b)(1).

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1 For the reasons set forth above, **IT IS ORDERED** that:

2 (1) Plaintiff's Motion to Proceed IFP [ECF No. 2] is DENIED and the action is  
3 DISMISSED without prejudice for failure to prepay the \$350 filing fee mandated by 28 U.S.C.  
4 § 1914(a).

5 (2) Plaintiff is GRANTED an additional **forty-five (45) days** from the date of this  
6 Order to either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP, which  
7 includes a certified copy of his trust account statement for the 6-month period preceding the  
8 filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a  
10 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this  
11 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files  
12 the attached Motion to Proceed IFP, *together with a certified copy of his trust account statement*  
13 *within 45 days*, this action shall remain closed without further Order of the Court.

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15 DATED: 10/24/12

  
16 HON. WILLIAM Q. HAYES  
17 United States District Judge  
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